

**RESPONSE TO ELECTION OF
SPECIES REQUIREMENT
U.S. Appln. No. 10/054,914**

REMARKS

Initially, in order to advance prosecution, Applicants hereby cancel Claims 1-32, and substitute therefore new Claims 33-63. This amendment is made solely to place the claims in proper U.S. patent claim format.

Further, to the extent that the Examiner is requiring Applicants to elect as between the composition claims (Claims 22-32) and the method claims (Claims 1-21), Applicants elect composition Claims 22-32 (now new Claims 53-63).

On page 2 of the Office Action, the Examiner appears to issue an Election of Species Requirement. While the Examiner is not clear, it appears that the Examiner is requesting Applicants to elect a specific biological active ingredient and sugar polymer.

Initially, Applicant note that the Examiner has failed to identify which, if any species claimed by Applicants are patentably distinct. Further, the Examiner has failed to explain why she considers these (unidentified) species are patentably distinct. Thus, Applicants are unclear as what election is being sought by the Examiner. The undersigned contacted the Examiner on December 9, 2003, seeking clarification of the same, but the Examiner failed to provide any clarification. Hence, the Examiner's Election of Species requirement is clearly improper and should be withdrawn, or the Examiner should specifically identify what species she deems to be patentably distinct, and explain in detail why she considers these species to be patentably distinct.

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In any event, to the best of Applicants ability to understand the outstanding Office Action, Applicants hereby elect the following species with traverse.

Regarding generic Claim 53, the specification sets out that the microparticles comprise water soluble gel forming solid particles which preferably comprise at least one or more of a group of specifically named microparticles. The examples show that two or more of the preferred group of microparticles are used in the various compositions specifically exemplified - see for example page 22 where four cores are described which contain dextrose/gelatin/starch/egg albumin. Example 2b describes a hydrogel core which contains starch and polyvinyl pyrrolidone.

Based on the above discussion, Claim 53 recites that the microparticles comprise water-soluble gel forming solid particles selected from two or more of the group consisting of dextrose, starch, gelatin, albumin and polyvinyl pyrrolidone.

In relation to the biologically active material, Applicants hereby elect interferon or erythropoietin (EPO).

In relation to the sugar polymer, Applicants hereby elect dextran and trehalose.


Examples 1 to 3 describe a coating liquid/coating layer comprising mannitol, and Example 4h describes a coating liquid/coating where the sugar polymer is trehalose.

There is no undue burden in examining the generic claims, indeed the Examiner indicates that upon allowance of the elected species, the generic claims will be examined. Thus, Applicants request withdrawal of the Election of Species Requirement.

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The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,



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